

AMENDED IN ASSEMBLY APRIL 14, 1998  
AMENDED IN ASSEMBLY MARCH 31, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

## ASSEMBLY BILL

**No. 1625**

**Introduced by Assembly Member Richter**

January 5, 1998

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An act to amend Section 6400 of, and to add Sections 12022, 12023, 12024, and 12026 to, the Fish and Game Code, relating to fish.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1625, as amended, Richter. Fish and game: penalties.

(1) Existing law makes it a crime to place, plant, or cause to be placed or planted, in any of the waters of this state, any live fish, any fresh or salt water animal, or any aquatic plant, without first obtaining written permission from the Department of Fish and Game.

This bill would make the attempt of that crime also unlawful.

(2) Under existing law, punishment for the crime described in (1) is a fine of not more than \$1,000, imprisonment in the county jail for not more than 6 months, or both the fine and imprisonment.

This bill would, instead, provide for a fine of ~~not less than~~ *up to* \$20,000 and imprisonment in the county jail for not more than 6 months for each violation and would provide for revocation of the defendant's state fishing privileges for 5

years. In addition, the bill would make the defendant liable for all resulting damages, as specified, that were caused by his or her unlawful activity.

(3) Existing law defines “aquatic nuisance species” to mean a nonindigenous species that threatens the viability or abundance of a native species, the ecological stability of waters inhabited by those species, or the viability of commercial, agricultural, aquacultural, or recreational activities that depend on those waters.

This bill would make it a felony to use or to attempt to use aquatic nuisance species to commit the crimes described in (1). Under the bill, punishment for this felony would be imprisonment in the state prison for one, 3, or 5 years, *and* revocation of all of the defendant’s licenses and permits issued under the Fish and Game Code, ~~and forfeiture of all property and equipment owned by the defendant that was used to carry out the crime.~~ In addition, the bill would make the defendant liable for all resulting damages, as specified, that were caused by his or her unlawful activity. The bill would except from ~~the above provisions~~ *this provision*, the placement of any live fish, any fresh or salt water animal, or any aquatic plant from the discharge or exchange of ballast water from any vessel, as defined.

*The bill would also except from its provisions, the placement of an aquatic plant by a person who was unaware that he or she was in possession of the plant.*

(4) Existing law authorizes the Director of Fish and Game to pay a reward from available funds, as specified, to any person who furnishes information leading to an arrest, a criminal conviction, or a specified punishment for any violation of the Fish and Game Code or any regulation adopted pursuant to that code.

This bill would specify that any person whom the department determines has provided evidence or information leading to the arrest and conviction of a person found guilty of committing the crime described in (1) would be eligible to obtain an award of up to \$50,000.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs



mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and hereby  
2 declares that the state's sport and commercial fisheries  
3 are resources of great economic and recreational  
4 importance. These resources are jeopardized by the  
5 introduction of a variety of aquatic organisms, and  
6 especially by the introduction of nonindigenous species  
7 that threaten the viability or abundance of a native  
8 species, the ecological stability of waters inhabited by  
9 those species, or the sustainability of commercial,  
10 agricultural, aquacultural, or recreational activities and  
11 the fisheries that depend on those waters. The  
12 Legislature therefore declares that the people of the state  
13 have a primary interest in regulating the placement,  
14 planting, and the attempted placement or planting of any  
15 live fish, any fresh or saltwater animal, or any aquatic  
16 plant in any waters of this state.

17 SEC. 2. Section 6400 of the Fish and Game Code is  
18 amended to read:

19 6400. It is unlawful to place, plant, or cause to be  
20 placed or planted, or to attempt to place, plant, or cause  
21 to be placed or planted, in any of the waters of this state,  
22 any live fish, any fresh or salt water animal, or any aquatic  
23 plant, whether taken without or within the state, without  
24 first submitting it for inspection to, and securing the  
25 written permission of, the department.

26 SEC. 3. Section 12022 is added to the Fish and Game  
27 Code, to read:

28 12022. (a) Notwithstanding Section 12002, a person  
29 who violates Section 6400 shall be liable for a fine of ~~not~~  
30 ~~less than~~ up to twenty thousand dollars (\$20,000) and shall  
31 be sentenced to imprisonment in the county jail for not

1 more than six months for each violation. In addition, that  
2 person's state fishing license privileges shall be suspended  
3 for five years. The court, in the interest of justice, may  
4 grant probation or suspend the imposition or execution of  
5 the imprisonment sentence only.

6 (b) In addition to subdivision (a), a person who  
7 personally or through another violates Section 6400 is  
8 liable to the owner of any privately or publicly owned  
9 property for any damages to that property caused by the  
10 violation. A person who violates Section 6400 shall also be  
11 liable for all monetary damages directly, indirectly, and  
12 proximately caused thereby, including, but not limited to,  
13 damages to any commercial fishery, sport fishery, or to  
14 the public communities that depend upon those fisheries  
15 for a portion of their annual income. The Attorney  
16 General may file a civil action on behalf of the fisheries  
17 or communities that are damaged as a result of the  
18 violation. In addition, a private citizen who suffers  
19 damages as a result of the violation may file a civil action  
20 against the violator.

21 (c) *This section does not apply to the placement of an*  
22 *aquatic plant by a person who was unaware that he or she*  
23 *was in possession of the plant. This exception includes*  
24 *circumstances in which a plant becomes unknowingly*  
25 *and temporarily attached or affixed to a boat, boat trailer,*  
26 *or boat motor.*

27 SEC. 4. Section 12023 is added to the Fish and Game  
28 Code, to read:

29 12023. (a) A person who violates Section 6400  
30 through the use or attempted use of an aquatic nuisance  
31 species, as defined in Section 6431, is guilty of a felony.  
32 The punishment for this felony shall include all of the  
33 following:

34 (1) Imprisonment in the state prison for one, three, or  
35 five years. The court may also impose a fine of not less  
36 than fifty thousand dollars (\$50,000) for each violation.

37 (2) Revocation of all of the defendant's licenses and  
38 permits issued pursuant to this code.

1 ~~(3) Forfeiture of all property and equipment used in~~  
2 ~~carrying out the violation, including, but not limited to,~~  
3 ~~boats, motors, trailers, and fishing or other equipment.~~

4 (b) A person who personally or through another  
5 violates Section 6400, through the use or attempted use of  
6 an aquatic nuisance species, is liable to the owner of any  
7 privately or publicly owned property for any damages to  
8 that property caused by the violation. A person who  
9 violates Section 6400 shall also be liable for all monetary  
10 damages directly, indirectly, and proximately caused  
11 thereby, including, but not limited to, damages to any  
12 commercial fishery, sport fishery, or to the public  
13 communities which depend upon those fisheries for a  
14 portion of their annual income. The Attorney General  
15 may file a civil action on behalf of the fisheries or  
16 communities that are damaged as a result of the violation.  
17 In addition, a private citizen who suffers damages as a  
18 result of the violation may file a civil action against the  
19 violator.

20 (c) A person who allows an aquatic nuisance species to  
21 escape from his or her property to the property of  
22 another, whether privately or publicly owned, is liable to  
23 the owner of the intruded upon property for any damages  
24 caused by the species.

25 (d) This section shall not apply to the placement of any  
26 live fish, any fresh or salt water animal, or any aquatic  
27 plant from the discharge or exchange of ballast water  
28 from any vessel as defined by Section 21 of the Harbors  
29 and Navigation Code.

30 *(e) This section does not apply to the placement of an*  
31 *aquatic plant by a person who was unaware that he or she*  
32 *was in possession of the plant. This exception includes*  
33 *circumstances in which a plant becomes unknowingly*  
34 *and temporarily attached or affixed to a boat, boat trailer,*  
35 *or boat motor.*

36 SEC. 5. Section 12024 is added to the Fish and Game  
37 Code, to read:

38 12024. (a) In addition to Sections 12022 and 12023, a  
39 person who violates Section 6400 is liable for all public and  
40 private response, treatment, and remediation efforts

1 resulting from the violation. The cost of these efforts shall  
2 constitute a debt of that person, and shall be collectible  
3 by the federal, state, county, public agency, or private  
4 individual or individuals, incurring those costs in the same  
5 manner as in the case of an obligation under a contract,  
6 expressed or implied.

7 (b) Public agencies participating in a response to a  
8 violation of Section 6400 may designate one or more of the  
9 participating agencies to bring an action to recover costs  
10 incurred by all of the participating agencies.

11 (c) The costs relating to an accounting for a violation  
12 of Section 6400 and the collection of any funds, including,  
13 but not limited to, the administrative, legal, and public  
14 relations costs of operating a response and remediation  
15 program may also be the subject of an action to recover  
16 costs which are charged against the responsible person.

17 SEC. 6. Section 12026 is added to the Fish and Game  
18 Code, to read:

19 12026. Any person whom the department determines  
20 has provided evidence or information leading to the  
21 arrest and conviction of a person or persons found guilty  
22 of violating Section 6400, is eligible to obtain a reward of  
23 up to fifty thousand dollars (\$50,000) pursuant to Section  
24 2586.

25 SEC. 7. No reimbursement is required by this act  
26 pursuant to Section 6 of Article XIII B of the California  
27 Constitution because the only costs that may be incurred  
28 by a local agency or school district will be incurred  
29 because this act creates a new crime or infraction,  
30 eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section  
32 17556 of the Government Code, or changes the definition  
33 of a crime within the meaning of Section 6 of Article  
34 XIII B of the California Constitution.

35 Notwithstanding Section 17580 of the Government  
36 Code, unless otherwise specified, the provisions of this act  
37 shall become operative on the same date that the act  
38 takes effect pursuant to the California Constitution.

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